

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFF FEISEL,

Defendant.

No. CR 05-0047

REPORT AND RECOMMENDATION

This matter comes before the court pursuant to the December 9, 2005, Application for Return of Seized Property filed by Jeffrey Feisel, II. The court held an evidentiary hearing on this motion on March 22, 2006, at which Jeffrey Feisel, II, appeared pro se. The government was represented by Assistant United States Attorney Marty McLaughlin. The court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The firearm at issue in this motion is a Remington Model 700 .270 caliber high-powered rifle with synthetic stock and stainless steel barrel. The defendant in this case, Jeff Feisel, gave it as a gift to his son, Jeffrey Feisel, II, in approximately 1998. Jeffrey Feisel, II, used this firearm to hunt deer in Missouri. The rifle was seized from defendant Jeff Feisel's residence and was subjected to a preliminary order of forfeiture on July 20, 2005.


Jeffrey Feisel, II, is not prohibited from possessing firearms by any reason. He testified to being an innocent owner of the firearm that was seized from his father's residence. He understands that this firearm may not be transferred to his father or any other prohibited person.

CONCLUSIONS OF LAW

The court treats this motion not only as an application for return of seized property but as a petition pursuant to 21 U.S.C. § 853(n). The court finds that the petitioner has established by the preponderance of the evidence that he has legal right or interest in the property and that such right or interest renders the order of forfeiture invalid as to that rifle because the claimant's interest in that rifle was superior to any claim of the defendant at the time of the commission of the acts giving rise to the forfeiture.

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections¹ to the Report and Recommendation within ten (10) days of the date of the report and recommendation, that the court amend the preliminary order of forfeiture dated July 20, 2005, to permit the return of the Remington Model 700 .270 caliber high-powered rifle to Jeffrey Feisel, II.

March 22, 2006.



JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT

¹Any party who objects to this report and recommendation must serve and file specific, written objections within ten (10) court days from this date. A party objecting to the report and recommendation must arrange promptly for a transcription of all portions of the record the district court judge will need to rule on the objections.